

**EXHIBIT 6**

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
BEFORE THE HONORABLE ALAN JAROSLOVSKY, JUDGE

In Re:	) Case No. 05-14659
	) Chapter 11
THE LEGACY ESTATE GROUP, LLC., a	)
California limited liability	) <u>MOTION for ORDER AUTHORIZING</u>
company, doing business as	) <u>SETTLEMENT of CLAIM NO. 122</u>
Freemark Abbey Winery, Byron	) <u>of JOHN M. BRYAN and RED</u>
Vineyard & Winery, and Arrowood	) <u>BARN RANCH LLC</u>
Vineyards & Winery,	)
	)
Debtor.	)
	)
In Re:	) Case No. 05-14660
	)
CONNAUGHT CAPITAL PARTNERS, LLC,	) <u>MOTION for ORDER AUTHORIZING</u>
	) <u>SETTLEMENT with the LEGACY</u>
Debtor.	) <u>ESTATE GROUP LLC and ITS</u>
	) <u>CREDITOR'S COMMITTEE</u>
	)
OFFICIAL COMMITTEE of UNSECURED	) Adv. 06-1173
CREDITORS of LEGACY,	)
	) <u>MOTION to CERTIFY PROCEEDING</u>
Plaintiff,	) <u>to DISTRICT COURT for TRIAL</u>
	) <u>by JURY</u>
v.	)
	)
JOHN M. BRYAN,	)
	)
Defendant.	) Friday, February 23, 2007
	) Santa Rosa, California

Appearances:

For Debtor The	Murray & Murray, P.C.
Legacy Estate Group:	By: John Walshe Murray, Esq., and
	Doris A. Kaelin, Esq.
	19400 Stevens Creek Boulevard
	Suite 200
	Cupertino, California 95014
Special Counsel for	Law Offices of William C. Lewis
the Debtor:	By: William C. Lewis, Esq.
	510 Waverley Street
	Palo Alto, California 94301-1720

Appearances continued on next page.

Appearances continued:

For the Creditor's Committee:	MacConaghy & Barnier, PLC By: John H. MacConaghy, Esq. 645 First Street West, No. D Sonoma, California 95476
	Winston & Strawn LLP By: David Honig, Esq. 101 California Street, Suite 3900 San Francisco, California 94111
For the Connaught Trustee Andrea A. Wirum:	McNutt & Litteneker, LLP By: Rebecca U. Litteneker, Esq. 188 Embarcadero, Suite 800 San Francisco, California 94105-1231
Connaught Trustee:	Andrea A. Wirum P. O. Box 1108 Lafayette, California 94549
For Laminar Direct Capital, L.P.:	Klee, Tuchin, Bogdanoff & Stern By: Thomas Patterson, Esq. Courtney E. Pozmantier, Esq. 1999 Avenue of the Stars, 39th Floor Los Angeles, California 90067
For Red Barn Ranch, LLC (via telephone):	Kirkpatrick & Lockhart Preston Gates Ellis, LLP By: David H. Wiseblood, Esq. 55 Second Street, Suite 1700 San Francisco, California 94105-3493
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Motion to Approve Settlement of Claim 122

3

1 Friday, February 23, 2007

9:08 o'clock a.m.

2 P R O C E E D I N G S

3 THE CLERK: This Court is in now in session, the  
4 Honorable Alan Jaroslovsky presiding.

5 THE COURT: Be seated, please.

6 THE CLERK: Number 1, The Legacy Estate Group.  
7 We have a telephonic appearance.

8 MR. MURRAY: Good morning, Your Honor. John Murray  
9 with Murray and Murray for The Legacy Estate Group.

10 MS. LITTENEKER: Good morning, Your Honor. Rebecca  
11 Litteneker representing Andrea Wirum, Trustee for Connaught  
12 Capital Partners.

13 MR. HONIG: Good morning, Your Honor. David Honig,  
14 Winston and Strawn, for the Creditor's Committee.

15 MR. ST. JAMES: Good morning, Your Honor. Michael St.  
16 James appearing on behalf of John Bryan.

17 MR. PATTERSON: Good morning, Your Honor. Tom  
18 Patterson from Klee, Tuchin, Bogdanoff and Stern for Laminar  
19 Direct Capital.

20 MR. LEWIS: Good morning, Your Honor. William C.  
21 Lewis, special counsel to Legacy Estate Group.

22 MR. MACCONAGHY: Good morning, Your Honor. John  
23 MacConaghy for - co-counsel for the Committee.

24 (The Clerk calls counsel appearing via telephone.)

25 THE COURT: Well, let's see. The first matter I have

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1 on my calendar is the motion for - I'm sorry. I forgot.

2 THE CLERK: Would you please state your appearance?

3 MR. WISEBLOOD: Good morning, Your Honor. David  
4 Wiseblood appearing on behalf of Red Barn Ranch, LLC.

5 THE COURT: All right. Now the first matter I have on  
6 my calendar is motion to approve the settlement of Claim Number  
7 122 of Mr. Bryan and Red Barn. Is that right?

8 MR. HONIG: I believe so, Your Honor. David Honig for  
9 the Creditor's Committee. We're the co-proponent of the  
10 settlement. As the Court is aware, Mr. Bryan and Red Barn  
11 collectively asserted claims at various times, as much as \$20  
12 million and more recently in the range of \$3 million, in  
13 connection with rejection of the Red Barn Grape Contract and Mr.  
14 Bryan's guaranty of that contract.

15 The parties, which included Red Barn, Mr. Bryan, the  
16 Legacy estate, and the Committee, attended a mediation on  
17 January 10th and concluded with a resolution of those claims in  
18 exchange for a single payment of \$750,000 from the Legacy estate  
19 to Red Barn. The claims that are all stated in Claim Number 122  
20 will all be extinguished.

21 THE COURT: All right. Is there anyone objecting to  
22 the motion?

23 MR. HONIG: No objection has been filed, Your Honor.  
24 We're aware of no objection.

25 THE COURT: All right. The motion is granted.

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1 MR. HONIG: Thank you, Your Honor.

2 MR. WISEBLOOD: Thank you, Your Honor.

3 And thank you, Mr. Honig, and everyone involved for  
4 your efforts.

5 MR. ST. JAMES: Thank you, Your Honor.

6 THE COURT: All right. Now the next thing on my  
7 calendar is in the Connaught case, the motion for the order  
8 authorizing a settlement with Legacy.

9 MR. LEWIS: Your Honor, if I may speak to that. It's  
10 also the mirror motion in the Legacy case because it's the  
11 settlement with the two estates.

12 THE COURT: Okay.

13 MR. LEWIS: And it's been noticed in both - in both  
14 cases. As the Court may recall, I was appointed as special  
15 counsel for Legacy because of disputes between the Connaught and  
16 the Legacy estates. From the time of my appointment, when I was  
17 appointed there was extensive discovery that had been commenced.  
18 There were issues as to - there were substantial issues as  
19 between the estates as to what claims each estate may have had  
20 against each other, if any, and as to rights each of the estate  
21 might have had against third parties.

22 Over the last three months significant resources have  
23 been expended by both estates. One in figuring out what their  
24 respective rights are. The trustee in the Connaught estate was  
25 fairly late in the case and had filed claims right before the

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1 first confirmation hearing in the Legacy case and objected to  
2 the confirmation of the Legacy plan.

3 The -- what has been crafted here after extensive work  
4 on both sides, after very heated and well-thought-out and  
5 substantially-worked-out negotiations between the estates is  
6 what I believe and we believe to be an elegant and simple  
7 settlement that will stop the bleeding between the estates,  
8 minimize the ongoing costs of both estates, and create an  
9 environment in which the estates can pursue resources for the  
10 benefit of creditors.

11 Simply stated, what the settlement does is have the  
12 estates become joint plaintiffs on claims against the insiders  
13 with the estates to share the net proceeds of that litigation  
14 50-50, with Legacy to have allowed an unsecured claim against  
15 Connaught for eight and a half million dollars, but with a cap  
16 on distributions to Legacy out of the Connaught estate such that  
17 Legacy --

18 THE COURT: I'm sorry. Did you say Legacy has a claim  
19 against Connaught estate?

20 MR. LEWIS: That is correct. Legacy has an eight and  
21 a half million dollar claim against the Connaught estate, which  
22 has a cap on distributions out of the Connaught estate not to  
23 exceed 50 percent of moneys distributable to all classes of  
24 creditors and interests.

25 And there -- what led to this claim, there are a

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1 variety of theories. And ultimately what we've worked out is an  
2 economic solution, Your Honor, that has a sharing of the  
3 litigation proceeds and then a return of some of those  
4 potentially to the Legacy estate. And one could articulate a  
5 whole variety of theories that led to that, but ultimately it's  
6 really a negotiated settlement as to the economics.

7 THE COURT: What was the nature of Legacy's claim  
8 against Connaught?

9 MR. LEWIS: There are two kinds of claims, and not  
10 necessarily limited to those, Your Honor, because the discovery  
11 was ongoing. But the two significant categories of claims would  
12 include mismanagement claims by Connaught, which as have been  
13 indicated in the motion could have been \$30 million or more, and  
14 also a fraudulent-conveyance theory. The distribution to the  
15 Bryan in the Bryan litigation may have been for the benefit of  
16 Connaught.

17 So among all of those things there were very  
18 substantial claims against Connaught by the Legacy estate.  
19 Connaught asserted its own theories of claims, but as the  
20 discovery went on, it's believed that by sharing the litigation  
21 proceeds, which is really where the resources are for both  
22 estates, both estates end up with a net benefit.

23 If we continue the litigation between the estates,  
24 there's been a significant bleed in both estates by virtue of  
25 the legal cost of pursuing these claims. They're very



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1 complicated. If litigated, we would spend tremendous amounts of  
2 moneys as between the estates. And nobody's sure where we would  
3 come out. So this is designed to stop that bleed and to  
4 maximize the return to creditors in both estates, which we  
5 believe it will establish.

6           Among the things that the settlement contemplates is  
7 joint counsel for the two estates. The Winston Strawn firm has  
8 already been pursuing some of this litigation, may pursue it  
9 all. The responsible person under the Legacy plan will be a  
10 joint plaintiff under that plan, as the Court may recall..

11           The other thing that this settlement will accomplish,  
12 Your Honor, is that it is the last linchpin to confirmation of  
13 the Legacy plan. This would resolve and result in a withdrawal  
14 of the Connaught trustee's objections to confirmation and their  
15 claims in the Legacy estate. So it not only works out an  
16 economic win for both estates in terms of going forward, but it  
17 also brings finality and closure to the Legacy estate.

18           THE COURT: Okay.

19           MS. LITTENEKER: Your Honor, Rebecca Litteneker. From  
20 the Connaught trustee's standpoint, this is also a very good  
21 settlement. The Connaught trustee is very pleased with this  
22 settlement.

23           As Mr. St. James pointed out at the last hearing, the  
24 Connaught trustee is a very practical person and views this as a  
25 very practical solution. In her view, the focus at this point

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1 should be to try to grow the pie for creditors rather than to  
2 spend a lot of money fighting with the Legacy estate over how to  
3 split the pie between the two estates. And that's exactly what  
4 this settlement does.

5 In this settlement both estates will jointly prosecute  
6 litigation and split the cost of that. Winston and Strawn may  
7 be the firm that prosecutes litigation. It may not be. But  
8 instead of both estates prosecuting litigation and then fighting  
9 between them over which estate actually owns different causes of  
10 action in dealing with the complexity of trying to split causes  
11 of action that involve the same parties and some of the same  
12 issues, we'll be prosecuting it together splitting the cost.  
13 The trustee will share in control of the litigation, and one of  
14 our concerns has been cost consciousness going forward and  
15 making sure things proceed in an efficient manner.

16 THE COURT: Have the identities of the defendants in  
17 this litigation been identified? Do we know who they are?

18 MS. LITTENEKER: The trustee has been conducting very  
19 - very intensive discovery through the month - largely through  
20 the month of January in preparation for - not only for a hearing  
21 on - an evidentiary hearing on the trustee's claim, but also  
22 with an eye toward other potential causes of action. And the  
23 trustee has ideas about who potential defendants would be.

24 We expect to get more information about other  
25 potential defendants, but we do have some ideas about who - who

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1 the trustee might sue in the Connaught estate and what those  
2 causes of action might be. So we are putting together that  
3 information. We have some ideas now. We expect to have  
4 additional ideas. That information came together once we did  
5 the discovery with - that was authorized pursuant to the  
6 stipulations that we entered into to get documents from other  
7 parties in December and January.

8 So this settlement is probably far - is definitely far  
9 more about splitting causes of action and moving together in the  
10 future than it is about settling the claim that the trustee  
11 filed in the Legacy case already. So it's much more about  
12 moving forward -

13 THE COURT: Well, Mr. Lewis says that the Legacy has  
14 claims against Connaught and Connaught has claims against Legacy  
15 also.

16 MS. LITTENEKER: Yes, this is true. We have claims  
17 against - we do have claims against Legacy and Legacy has claims  
18 against Connaught. And this - the beauty of this settlement is  
19 we're resolving all those things and we're agreeing on a joint  
20 prosecution of causes of action that we would otherwise have to  
21 spend a lot of money fighting over the splitting of in the  
22 future.

23 So this resolves past issues, this resolves future  
24 issues. It resolves the issues that we brought forward in the  
25 claim that we filed as well as additional things that we found

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1 in the due diligence - in the discovery process. And we think  
2 that this is a very clean, very practical, a very economic  
3 method of going forward. And it was heavily, heavily negotiated  
4 on both sides, by the Connaught trustee as well as by the Legacy  
5 - the Legacy parties and the Creditor's Committee.

6 We feel that it's - it is a very good thing for the  
7 Connaught creditors and we think that - that it's in their best  
8 interests.

9 MR. LEWIS: If I could try to answer one question that  
10 the Court just directed about who are the defendants. The  
11 settlement indicates that the joint defendants really are the  
12 insiders and affiliates of insiders. They are separate claims  
13 that are preserved by the estates against noninsiders. So  
14 Connaught will have the right to continue to pursue its  
15 individual claims there. But the settlement, generally the  
16 contemplation of the joint claims is with respect to Bryan and  
17 the insiders.

18 MS. LITTENEKER: I'd like the point out for the record  
19 as well that the trustee is in the courtroom as well. I know  
20 the Court can see that, but for the record I'd like to point  
21 that out. Thank you.

22 THE COURT: Yes. I did see her.

23 MR. LEWIS: And so the Court is aware also, the  
24 trustee has individually been actively involved, vigorously  
25 involved in working with counsel on both sides extensively. She

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1 could so indicate to the Court, but has been a very active  
2 participant in these discussions.

3 THE COURT: Well, I mean the reason I asked the  
4 question is that the only objection I saw was from Mr. Bryan.  
5 And obviously I want to hear from Mr. St. James, but I'm  
6 interested in whether Bryan has objected because the settlement  
7 is not good for him as a creditor or it's not good for him  
8 because there's a big bullseye on his back.

9 (Laughter.)

10 MR. LEWIS: Well, he - he will answer that undoubtedly  
11 in one way. We believe that the other is a significant issue.

12 MR. PATTERSON: Yeah. Certainly the main action that  
13 is - that is preserved by this settlement as to the joint  
14 prosecution is the action against the Bryan entities.

15 Good morning, Your Honor. Tom Patterson for Laminar.  
16 The settlement also deals with a sort of stray issue that has  
17 been lingering out in the cases, and that is a stipulation that  
18 Laminar and the two debtors entered into at or around the time  
19 of the closing to facilitate the closing. It was referred to at  
20 that time as a Stipulation re Closing. I think we wrote it in  
21 about an hour and a half when we were told that the closing was  
22 imminent and various arrangements had to be made.

23 That stipulation was presented in both the Connaught  
24 and the Legacy cases. Your Honor entered an order in the Legacy  
25 case. And between the time of its submission and consideration,

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1 the Connaught trustee was appointed and indicated that she  
2 needed some time to assess whether this was in the Connaught  
3 estate's interests.

4 We've had a lot of discussion with the estates with  
5 respect to the matters set forth in the Stipulation re Closing.  
6 And in connection with this settlement and as noticed in the  
7 motion, the Connaught trustee is now prepared to assent to the  
8 entry of an order approving the Stipulation re Closing in the  
9 Legacy and Connaught cases. And we have submitted a stipulation  
10 in both cases providing for that consent.

11 The stipulation also cleans up a few stray matters  
12 that existed in the cases because of the speed with which we did  
13 things at the time of closing. And one, for example, is the  
14 fact that in the Stipulation re Closing we misstated the amount  
15 of the carveout for which Laminar is still contingently liable,  
16 and we understated it. And we had always agreed and said that  
17 when — you know, when we tie things up that of course we'll  
18 agree to modify that number to the proper-calculated number. So  
19 this stipulation does that as well as a few other sort of minor  
20 clean-up items.

21 I don't think there are any matters with respect to  
22 our stipulations that are controversial. They just sort of  
23 represent clear up of things that happened some time ago.

24 THE COURT: Now did I sign an order in the Legacy case  
25 or —

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1 MR. LEWIS: Yes.

2 MR. PATTERSON: Yeah.

3 MR. LEWIS: You signed the order in Legacy, but not in  
4 - not the mirror order in Connaught. This has the Connaught  
5 trustee consenting to that.

6 THE COURT: All right. I - I'm a little uncomfortable  
7 signing orders where I don't see where they comfortably fit into  
8 the Bankruptcy Code. I am assuming, since I signed one order,  
9 that I - my concern, my usual concerns were satisfied at that  
10 time, so I'm assuming that when I look at this there won't be  
11 any lingering concerns. It's nothing that has to be noticed?

12 MR. PATTERSON: Well, Your Honor, this - this  
13 arrangement was noticed through the motion that was filed,  
14 paragraph 12 of the motion, in both the Connaught and the Legacy  
15 cases, advised creditors and parties-in-interest that this would  
16 be considered. And earlier this week, when we finally got all  
17 the signatures and so forth, we lodged the two stipulations, one  
18 in the Connaught case and one in the Legacy case.

19 So what would be presented for Your Honor would first  
20 be an order approving the Stipulation re Closing in the  
21 Connaught case. That's the sort of clean-up manner, in that  
22 respect. And then approving the stipulation that we lodged in  
23 both cases in each of the Connaught and Legacy case, and that  
24 has the effect of approving the various clean-up items, for  
25 example, the restatement of the carveout amount in both cases.

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1 MR. LEWIS: So the Court is clear, the Stipulation re  
2 Closing for which an order was entered in the Legacy case was  
3 also noticed in the Connaught case, and there were no  
4 objections. The trustee simply didn't have time to examine it,  
5 et cetera, and at this point is prepared to consent to the entry  
6 of that order. So there are no objections and it has been  
7 noticed.

8 THE COURT: Okay. That's fine. Now why do I need to  
9 do another order in the Legacy case?

10 MR. PATTERSON: Well, the - because the stipulations  
11 that we have done also restate the carve amount - the carveout  
12 amount to the correct amount, for example. And the order that  
13 the Court has entered in the Legacy order - in the Legacy case,  
14 which we presented, approves the misstated carveout amount, for  
15 example.

16 THE COURT: So you want an amended order in the Legacy  
17 case?

18 MR. PATTERSON: Well, it's not so much an amended  
19 order, because the - there are a few other things that are -  
20 that are just being tidied up. And so it's actually an order  
21 approving the stipulation that we submitted this week. But the  
22 main effect of it is - is to restate the carveout amount.

23 I don't think there's any need to amend the prior  
24 approval. The Court can just approve the stipulation and that  
25 will have that effect.



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1 THE COURT: And there's no conflict between the two  
2 orders?

3 MR. PATTERSON: No, Your Honor. I mean the - well, in  
4 a sense, but the parties are certainly clear that the later in  
5 time will -

6 THE COURT: Well, shouldn't the second order refer in  
7 some way to the first?

8 MR. LEWIS: It does - well, I'm sorry. The  
9 stipulation does. I don't know if the order does -

10 MR. PATTERSON: The stipulation does. When we submit  
11 a form of order, Your Honor, we're happy to say that the - that  
12 this supersedes the prior order, so it's clear.

13 MR. LEWIS: To the extent different.

14 THE COURT: Okay.

15 MR. PATTERSON: Correct.

16 MR. LEWIS: Yes.

17 MR. PATTERSON: Thank you, Your Honor. I apologize  
18 for this procedural morass. We're just trying to get it tidied  
19 up.

20 THE COURT: All right. Well, if I - if I signed the  
21 order the first time that meant that I've already thought about  
22 it, so I don't see any problem basically doing the same thing in  
23 the other case in the absence of any opposition.

24 Well, that just leaves us with determining whether or  
25 not I ought to approve the compromise between the two estates.

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1 Bryan - or, I'm sorry. Mr. St. James.

2 MR. ST. JAMES: Thank you, Your Honor. Your Honor,  
3 let me just say, perhaps echoing the Court's misgivings, I have  
4 not had a chance in the couple days that it's been around or the  
5 day that it's been around to look at the Laminar stipulations.  
6 If they are in fact nonsubstantive tidying up, that's great.  
7 But I'd just point out that to the extent that there is anything  
8 substantive about them, there has not been anything  
9 approximating due process or notice. And that's - that's -

10 THE COURT: Counsel just told me it was noticed and  
11 there were no objections.

12 MR. ST. JAMES: What they say happened was several  
13 months ago it was noticed and the Connaught trustee on behalf of  
14 Connaught was unwilling to sign it. And now as part of this  
15 overall deal, the Connaught trustee is not only willing to sign  
16 that stipulation, but everybody over there is willing to change  
17 the stipulation and they'd like the Judge to sign off on both  
18 things.

19 And all I'm suggesting is that the new stipulation has  
20 been out for a day or two. I have not had a chance to study it.  
21 If it is in fact just tidying up, then it's just tidying up. To  
22 the extent that it's substantive, I'm just pointing out that  
23 there hasn't been anything approximating due notice.

24 And that is really my concern about the overall  
25 settlement. Maybe it's a good idea, maybe it's a bad idea. But

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1 the one thing that's clear is that there hasn't been anything  
2 approximating due process.

3 If you look at the way things stood last Friday, the  
4 Connaught trustee had asserted for what seemed to be fairly good  
5 reasons, a \$4 million claim against the Legacy estate. And the  
6 Legacy estate, guided by both a debtor-in-possession and a  
7 committee, had elected not to assert any claims against  
8 Connaught. That's the way things were last Friday: \$4 million  
9 going only one way.

10 Today it's eight and a half million dollars going the  
11 other way. And there is a claim of Legacy in the Connaught  
12 estate for eight and a half million dollars, the claim of  
13 Connaught through the Legacy estate is waived, and there's no  
14 real explanation except that these parties have decided that  
15 that's a good economic outcome.

16 My client holds \$5.7 million of contract claims in the  
17 Connaught estate, promissory note claims in the Connaught  
18 estate; and before this settlement was by far the largest  
19 creditor in the Connaught estate; and could have assumed that if  
20 anybody had come in today to file a claim against the Connaught  
21 estate, the fact that the claim would be time barred would be a  
22 meaningful defense.

23 Now the assertions for bases for why there would be a  
24 claim of Legacy against Connaught are all things that the  
25 committee knew or should have known and the debtor knew or

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1 should have known long before the Connaught claims bar date.

2 And so in the ordinary context, if the Legacy estate had filed a  
3 proof of claim in Connaught today, the Connaught trustee could  
4 have objected or we could have objected and pointed out that  
5 it's at least time barred and at least is junior to our claim.

6           There's no explanation of any of this stuff. There's  
7 no explanation as to the merits of why Legacy should have a  
8 claim against the Connaught estate. The first time anybody  
9 heard anything about the merits was when Mr. Lewis explained it  
10 to the Court. The Court didn't know, I didn't know, nobody knew  
11 except whoever asserted it around that table. And that's not  
12 the way a compromise is supposed to work. 9019 does not  
13 contemplate that the parties can figure it out themselves and  
14 the Court and the creditors rubber stamp it.

15           9019 contemplates that people will explain what's up  
16 and why they're doing it so that the Court and the creditors can  
17 have some sort of meaningful involvement. And that hasn't been  
18 done here. And then it's been compounded by the fact that after  
19 the Court said seven days' notice was sufficient, the parties  
20 decided that two days' notice would be better. And so the  
21 notice that went out seven days ago said: Well, here are some  
22 ideas, but basically it's all overruled by the terms of the  
23 settlement agreement.

24           And when people said: Well, can I see the settlement  
25 agreement, the answer was: No, not yet. Maybe later.

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1 And so on Tuesday at noon, you know two business days  
2 ago, we got the terms of the settlement agreement. And there  
3 are things in the settlement agreement that are very different,  
4 that are not at least discussed in the notice at all.

5 And, Your Honor, if in fact there was going to be a  
6 foreclosure tomorrow, if in fact there was going to be some  
7 horrible, dire emergency that made it important to rush to  
8 justice, then maybe it'd be understandable. But there isn't  
9 anything that's happening out there except a desire to get this  
10 thing done as quickly as possible with as little notice as  
11 possible to move onto whatever else people want to do.

12 THE COURT: I think it's with as little as expense as  
13 possible.

14 MR. ST. JAMES: Your Honor, there is no difference in  
15 expense between meeting here today and meeting here in two  
16 weeks. There is no difference in expense. The same bodies are  
17 going to drive up here if the hearing's today or if the  
18 hearing's in two weeks.

19 I admit that there is a difference in whether they  
20 explain what the deal is and why, but I don't think that saving  
21 money by not explaining what's up is a legitimate concern, not  
22 in a case like that.

23 So, Your Honor, I'd submit, first and foremost, that  
24 there ought to be due process about something as big as this.  
25 And there ought to be a real explanation of what's up. If the

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1 Connaught trustee has decided that her \$3 million claim against  
2 Legacy was bogus, she should say that. She should explain why  
3 she's realized that it was a mistake. If everybody's decided  
4 that really Legacy has an \$8 million claim against Connaught and  
5 - and it's a good solid claim, they should explain some time  
6 prior to oral argument at the hearing why they think there could  
7 be such a claim. I think they should explain why they think  
8 that it's not late and time barred.

9 I think they should just explain this stuff and we  
10 should have something that approximates due process.

11 Thank you, Your Honor.

12 THE COURT: Well, before you respond, this is just  
13 general comments at this side of the room. You as a group have  
14 some calls to make. You would think that they would be my  
15 calls, but they're not really. Mr. St. James on behalf of Mr.  
16 Bryan has been the lone fly in the ointment for a few hearings  
17 now. And I don't know nor do I care whether he's motivated by  
18 the fact that he's worried about maximizing the Bryan claim or  
19 he's worried about being the object of the litigation attentions  
20 of the - of the two estates.

21 I do note that there is a trustee in the Connaught  
22 case because of Mr. Bryan's motion. So it's - it's worthy of  
23 comment that the trustee, an independent trustee was appointed  
24 at his request, and the independent trustee is now taking a  
25 divergent view as to what's best for that estate.

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1           The reason I say you've got calls is because Mr. Bryan  
2 is raising procedural hurdles. He's saying that there hasn't  
3 been due process. I'm skeptical about that. I'll listen to  
4 your arguments if you want to go forward, but the fact of the  
5 matter is those arguments go away if we set an evidentiary  
6 hearing, come back in a couple weeks, I take testimony, and then  
7 we're only talking about the actual legal issues. And there's  
8 no question of being unfair to anybody.

9           So I think we should take a recess and you make the  
10 call. I suspect if you all insist on going forward today, that  
11 I may give different - deference to your wishes. But you could  
12 end up in front of some appellate court somewhere instead of  
13 arguing the merits of your settlement, you could be arguing  
14 whether you ran roughshod over Mr. St. James and his client.

15           So why don't we take a five-minute recess, confer  
16 among yourselves, and see how you want to proceed.

17           MR. LEWIS: Thank you, Your Honor.

18           MR. ST. JAMES: Thank you, Your Honor.

19           (Hearing recessed from 9:39 a.m. to 10:15 a.m.)

20           THE CLERK: Number 2 on the nine o'clock calendar:  
21 Connaught Capital Partners.

22           MR. LEWIS: Your Honor, do you want appearances again?

23           THE COURT: No. I remember who you are, Mr. Lewis.

24           MR. LEWIS: Okay. Your Honor, I think we've worked  
25 out an agreement subject to the Court's availability to continue

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1 the hearing. And the dates that work for the parties, if it  
2 works for the Court, are the afternoon of the 13th from two  
3 o'clock on or any time on the 14th.

4 THE COURT: Well, let's take a look.

5 MR. LEWIS: I saw a nod on the 14th.

6 THE COURT: Yeah, I've got a one-day trial on the  
7 13th, but the 14th is entirely open. Shall we set that aside  
8 for you?

9 MR. LEWIS: Yes. Ten o'clock. Is that agreeable to  
10 the Court?

11 THE COURT: That will be fine.

12 MR. HONIG: What time?

13 MR. LEWIS: Ten o'clock?

14 I see no objection to ten o'clock.

15 MR. ST. JAMES: Thank you, Your Honor.

16 THE COURT: All right. I will hold an evidentiary  
17 hearing then on March 14th at ten o'clock on the advisability.  
18 Now I believe I have -

19 MR. ST. JAMES: Your Honor? That's not I think what I  
20 at least contemplated. We had a discussion in the halls, and  
21 I'm not representing that there's any agreement about it. But  
22 what I said was, "I think that you all should put together a  
23 motion that explains why this is a good deal under 9019 and then  
24 we can have a hearing on whether this is a good deal under  
25 9019."



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1           And what I said in the halls was, "I don't think that  
2 it makes any sense to schedule an evidentiary hearing because if  
3 we were doing a serious evidentiary hearing, then I would want  
4 to take discovery before the evidentiary hearing so I knew what  
5 was happening. And we certainly couldn't do that very quickly  
6 and that seems like a lot of expense and it doesn't make a lot  
7 of sense to me when what I'm really just asking for is a good  
8 explanation of the basis for the motion."

9           So I wanted to say that because I do not contemplate  
10 an evidentiary hearing on that day.

11           THE COURT: Unless you're waiving your right to an  
12 evidentiary hearing, I am going to give you fair notice that I  
13 may consider testimony at that time and I anticipate giving an  
14 up or down to the compromise at that time.

15           MR. ST. JAMES: In that case, Your Honor, I would  
16 suggest that that date is not convenient because what I need to  
17 do, if we're really going to have an evidentiary hearing on this  
18 compromise, is -

19           THE COURT: We're really going to have a final  
20 decision on this compromise.

21           MR. ST. JAMES: Then what I assume I need to do is  
22 start taking depositions. It would be helpful, obviously, if  
23 people would give me an explanation of why we're doing this  
24 compromise beforehand, so I'd know whether it's necessary or  
25 not. But if this is going down that path, then I need to have

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1 the hearing continued until much later in the month.

2 I've told them that I will be out the week preceding  
3 the 14th. I don't think that I can start taking depositions  
4 this week. And while I think it's an unreasonably expensive way  
5 of finding out way this motion is here, if that's what we have  
6 to do, then I have to start scheduling depositions in the week  
7 of the 14th and asking for a hearing at the end of March.

8 I'd prefer if they would simply prepare a 9019 motion  
9 that explained why this deal makes sense, and that might resolve  
10 everything. But I have to accommodate the Court's preference.  
11 And if the Court prefers that we simply go to a sudden-death  
12 evidentiary hearing, then I need to proceed with discovery  
13 first.

14 THE COURT: Well, look, this case started out with a  
15 lot of divergent interests, many divergent interests. We had  
16 two debtors with separate interests. We had eq- — one of the  
17 debtor was an equity owner. We had the unsecured creditors. We  
18 had the evil hedge fund. A lot of different players. It's come  
19 down now to everybody's on one table and you're sitting at the  
20 other one. And I'm not sure whether you're sitting there  
21 because you're really concerned about the Connaught estate or  
22 you're concerned because your client is the object of  
23 anticipated litigation.

24 You've made an argument that I'm being unfair by  
25 rushing things. As I pointed out to all the others, it's really

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1 their choice. And I guess it's still their choice, but at a  
2 certain point I'm not going to let you drag the proceedings on  
3 as the lone voice in the wilderness, especially when I'm  
4 concerned about your client's motivations, in the first place.  
5 So there is a definite limit to how much mileage you get out of  
6 this due process argument.

7 The national rules require 20 days' notice. You will  
8 have had far more than that if I put it over to the 14th. And I  
9 really don't think you're entitled to anything more than that.

10 Here again it's not really my call. It's the parties  
11 involved. Do you want me to set it for an evidentiary hearing  
12 at that time or do you want a preliminary hearing?

13 MR. LEWIS: Yeah. Your Honor, what - what we advised,  
14 and I will answer your question, but what we advised Mr. St.  
15 James is that we are going to provide supplemental information  
16 to him. But if he's not - you know, we think we've satisfied  
17 the requirements of 9019 in the motion that's been filed and the  
18 presentation that's been made today. We think the Court could  
19 rule on that. If the Court wants evidence on that, we're  
20 prepared to put it on.

21 We will provide Mr. St. James additional information.  
22 Whether or not it will satisfy him, we have just no way of  
23 knowing. We intend to do that probably by next Tuesday. That's  
24 why we picked the date we did. And then we'll communicate with  
25 him in good faith, trying to answer any questions he has, but we

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1 don't want further delay. We don't want further expense. It's  
2 built into why are we settling this. It's not because of him,  
3 but just because of those issues.

4 We're trying to get the Legacy plan confirmed. We're  
5 trying to stop the bleed of legal fees, which are sincerely  
6 bleeding the estate. And we're trying to stop that and get  
7 positive, not negative.

8 So we think the date of the 14th is fine. We don't  
9 want to extend it any further, because the more time we take the  
10 more it's going to cost to get there.

11 MR. ST. JAMES: Your Honor, I have no problem with  
12 that. When I left the conversation, what I thought I heard Mr.  
13 Lewis say is, "We are not going to commit to providing any  
14 additional information." And that's what led to my comments.  
15 Now that I understand that there is a commitment to provide  
16 additional information, to provide it by a date early next week,  
17 I have no problem with going forward on the 14th.

18 THE COURT: All right. So I want you to have fair  
19 notice that I may consider testimony at that time if necessary.  
20 I was saying I believe I have the trustee's declaration in the  
21 file.

22 MR. LEWIS: You also have a declaration by the  
23 responsible - excuse me - by a member of the Creditor's  
24 Committee.

25 THE COURT: All right. Well, I will consider those

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1 declarations and any other declarations which may be filed  
2 between now and then so long as the declarants are available in  
3 court at that time to be cross-examined. And if I consider  
4 those declarations, you will have a right to cross-examine them.  
5 If you wish to bring any witnesses of your own, I will be happy  
6 to listen to them. But what I anticipate is you getting the  
7 further information that you need, which I believe counsel was  
8 representing you're going to have by next Tuesday, and then the  
9 choice will be yours as to how you proceed. But I do want to  
10 give you an up or down on the compromise one way or another and  
11 I want to do that at the continued hearing.

12 MR. LEWIS: Thank you, Your Honor.

13 MR. ST. JAMES: Thank you, Your Honor.

14 MS. LITTENEKER: Thank you, Your Honor.

15 MR. PATTERSON: Your Honor, I take it the Laminar  
16 stipulations will also be as part of this motion heard the same  
17 day; just to be clear?

18 THE COURT: That works for me if it works for you.

19 MR. PATTERSON: It's certainly fine with me. I wasn't  
20 sure whether Mr. St. James wanted to move them as well or  
21 whether he had - still had issues with those.

22 MR. ST. JAMES: I would appreciate that, just because  
23 I haven't had the chance to study them.

24 MR. PATTERSON: That's fine with us.

25 THE COURT: Okay. We'll consider those at the same

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1 time.

2 MR. LEWIS: Thank you very much, Your Honor. We  
3 appreciate the Court's time.

4 THE COURT: Okay.

5 MR. ST. JAMES: Thank you.

6 THE COURT: All right. thank you.

7 MR. ST. JAMES: Your Honor?

8 THE COURT: Yes.

9 MR. ST. JAMES: There is one last matter that was set  
10 for hearing today.

11 THE COURT: Oh, oh, oh. Is that - yeah, I was  
12 scratching my head over that one.

13 THE CLERK: This is number 6.

14 THE COURT: You wanted a jury trial?

15 MR. ST. JAMES: Your Honor, up until a day ago  
16 everybody wanted a jury trial.

17 THE COURT: You - the reason I was scratching my head  
18 is that you had filed several claims - on behalf of your client  
19 had filed several claims in the case. And then when I looked at  
20 the complaint it was the plaintiffs that wanted the jury, so I  
21 wasn't sure what's going on.

22 MR. ST. JAMES: Well, Your Honor, on your first issue,  
23 last night I received a declaration that suggested that by  
24 filing a claim for Sycamore Vineyard, we had actually filed a  
25 claim for a trust, which is a defendant that I thought had never

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1 filed a claim. And I had not been able to hunt that to ground  
2 in the, I guess, almost no business hours between receiving it  
3 yesterday and this morning's hearing.

4 The suggestion was that the matter be continued so  
5 that people could figure that out, and I have no objection to  
6 that. So we could also push this over to the same hearing date.  
7 That would be fine.

8 I would point out that there seems to be a great deal  
9 of manipulation going on here. The plaintiffs represented by  
10 very capable counsel filed a jury demand with their complaint.  
11 Rule 9015 says that when you file a jury demand you cannot  
12 withdraw it without the consent of all the parties. So it was a  
13 serious decision seriously made, and then last night I got a  
14 unilateral withdrawal of the plaintiff's jury demand.

15 I don't understand what is going on there, but I'm  
16 happy to have the matter continued over to this next hearing.  
17 And that will give us a chance to respond to the allegations in  
18 last night's declaration.

19 THE COURT: Oh, okay. Are you saying they can't -  
20 they can't withdraw the jury demand?

21 MR. ST. JAMES: Yeah. Rule 9015 incorporates Federal  
22 Rule 38(d), which says, "A demand for trial by jury, made as  
23 herein provided, may not be withdrawn without the consent of the  
24 parties." And under Ninth Circuit law, there is a case that  
25 says, "Any attempt to withdraw the demand without the

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1 respondent's consent could not succeed." That's fairly well  
2 established law throughout the country and it's obviously  
3 codified in Federal Rule 38(d).

4 So, you know, this is a case in which I think  
5 everybody who has filed either a complaint or an answer to date  
6 has requested a jury. And now that the natural consequence of  
7 requesting a jury, which is that we go to the district court has  
8 become clear, everybody is now scurrying to get around it.

9 And I don't think that that's the way the game's  
10 supposed to be played, but I'm happy to have it put over until  
11 our continued hearing, if you'd like.

12 THE COURT: Well, that's interesting. Is it - does  
13 the rule - I've never come across this before. Does the rule  
14 say that you can't do without consent or order of the court, or  
15 it just says you can't do it without consent, period?

16 MR. ST. JAMES: It says you can't do it without  
17 consent, period. I'm not saying that the rule prevents the  
18 Court from making an order. All I'm saying is that what the  
19 rule says is that once you make a jury demand you cannot  
20 withdraw it without the consent of all the parties. And that  
21 rule is part of the federal rules. It's part of Bankruptcy Rule  
22 9015, and it's adopted in this district by Bankruptcy Local Rule  
23 9015-1(a), I think.

24 THE COURT: Well, frankly if that's the case it's okay  
25 with me. It's just one less case on my docket, but it's an



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1 unusual situation where the - usually the estate representatives  
2 don't want a jury trial because of the time and expense involved  
3 as opposed to having it heard here.

4 But is everyone amenable to hearing the matter on  
5 March 14th?

6 Okay.

7 MR. ST. JAMES: Thank you, Your Honor.

8 MR. MACCONAGHY: Your Honor, one thing, because there  
9 is this factual issue of whether Sycamore Vineyards is a  
10 fictitious dba of the John and Florence Bryan Trust, the  
11 Committee may want to do discovery on this issue, and taking -  
12 including taking the depositions of Mr. Bryan and perhaps an  
13 individual named Alan Brudos (phonetic). In the past -

14 THE COURT: Well, if Ms. Bryan - if Mr. St. James is  
15 correct, and that the jury demand can't be withdrawn without his  
16 consent, then does it really matter whether or not Sycamore has  
17 filed a proof of claim?

18 MR. MACCONAGHY: I don't think it does, but we want to  
19 be able to address all factual and legal issues by the 14th.  
20 And as to that issue, Your Honor, I think that the - there's a  
21 real question as to whether the estate representative, i.e., the  
22 Committee, was entitled to a demand in the first place or  
23 entitled to a jury in the first place.

24 The complaint was drafted by litigators who, you know,  
25 have - one of the things pounded into the heads of litigators is

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1 you always make a demand for jury because you can waive it later  
2 on. And that's why this was done. And I think the reason for  
3 Rule 38(d) is the context that usually if one party demands a  
4 jury, the other party or other parties are entitled to rely on  
5 that jury demand. And so requiring the consent for withdrawal  
6 is a way of giving somebody else a chance to make a subsequent  
7 jury demand. It's an issue that we want to brief, and if we  
8 conclude based on our legal research that either they don't have  
9 an absolute right to block it or - or we never had a right in  
10 the first place, we want to be able to do discovery on the  
11 factual question of whether the Sycamore Vineyards is really the  
12 John and Bryan Trust.

13 And in the past when we've tried to depose Mr. Bryan,  
14 we had gotten a vigorous motion for a protective order from Mr.  
15 St. James. And I want the ability to do factual discovery on  
16 this issue of whether they're the same entity.

17 THE COURT: Well, why don't we deal with the threshold  
18 legal issue first. And if there's a factual issue left over,  
19 we'll put that over and give you time to do some discovery.

20 MR. MACCONAGHY: Okay.

21 MR. ST. JAMES: Thank you, Your Honor.

22 THE COURT: Okay.

23 MR. PATTERSON: Your Honor, one final calendaring  
24 matter. We have on calendar a motion to dismiss in the  
25 adversary proceeding that is currently set for next Friday,

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1 March 2nd, at 9:00 a.m. For the convenience of the parties, the  
2 motion to dismiss was brought by Laminar against the crossclaim  
3 asserted by the Bryan entities. We would like to have that  
4 moved to the 14th as well so that all these matters can be heard  
5 on the same day. We don't have out make separate trips. I've  
6 asked Mr. St. James whether that would be convenient for him.  
7 He has checked with the litigator who is handling that hearing.  
8 And I believe Mr. St. James has said that date is agreeable to  
9 their side. And so with consent, could that be moved to the  
10 14th as well?

11 THE COURT: Okay.

12 MR. FATTERSON: Thank you very much.

13 MR. ST. JAMES: Thank you, Your Honor.

14 MR. FATTERSON: Should we file anything with the Court  
15 to change the calendar?

16 THE COURT: No. As long as all the parties know about  
17 it, we'll change our calendar.

18 MR. FATTERSON: Thank you very much.

19 [COUNSEL]: Thank you, Your Honor.

20 THE COURT: Thank you.

21 (The matter was concluded at 10:33 o'clock a.m.)

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State of California                    )  
  )     SS.  
County of San Joaquin                )

I, Susan Palmer, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the digital recording provided to me by the United States Bankruptcy Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am not a party to nor in any way interested in the outcome of this matter.

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Dated March 5, 2007